

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

IN RE:

Case No. 18-05001-swd

Kellie Patrice Distefano,

Chapter 7

Filed: 12/03/2018

Debtor.

Hon. Scott W. Dales

**DEBTOR'S MOTION FOR ORDER ENFORCING AUTOMATIC STAY
AND FOR ORDER AWARDING SANCTIONS FOR WILLFUL
VIOLATION OF AUTOMATIC STAY**

Debtor, by and through her attorney Scott Mancinelli, states:

1. The Debtor filed a Chapter 7 bankruptcy petition on December 3, 2018.
2. Bridgecrest Acceptance Corp. "Bridgecrest" is an auto loan financing company located in Arizona, whose last known business address is PO Box 29018, Phoenix, AZ 85038.
3. Debtor is informed and believes that Bridgecrest does business under the name "DriveTime" or that it is an affiliated entity, as it is also located in Phoenix Arizona.
4. Drivetime was listed as a secured creditor on Debtor's bankruptcy Petition Schedule D page 24.
5. Bridgecrest was listed on Debtor's bankruptcy Petition Schedule D page 23 with the address of PO Box 29018, Phoenix, AZ 85038, regarding a vehicle loan that Debtor had on a Toyota Prius.
6. On June 6, 2019, Debtor filed a motion to redeem her Toyota Prius Dkt. 30.
7. On June 13, 2019 Bridgecrest appeared in this case through attorney Panayiotis D. Marselis, filing a response to the Motion to Redeem, Dkt. 33.
8. Bridgecrest has been aware and has had actual knowledge of Debtor's bankruptcy since at least June 13, 2019.

9. Debtor's motion was subsequently withdrawn, and debtor gave notice that the vehicle could be picked up by Bridgecrest.

10. Sometime between July 10 and August 12, 2019, Bridgecrest picked up and removed the Toyota Prius without any notice to Debtor and without filing a motion for relief from stay.

11. On or about August 12, 2019, Bridgecrest sent Debtor letter "Notice of Disposition and Our Plan to Sell Property" which also stated that it was going to sell the vehicle and that "if we get less money than you owe, you will still owe us the difference."

12. On August 23, 2019, this Court issued a discharge in this case.

13. A copy of the discharge was served on Bridgecrest on Bridgecrest by regular mail on August 23, 2019, at its address of PO Box 29018, Phoenix, AZ 85038. See certificate of service listing Bridgecrest Dkt. 37 page 1.

14. On August 30, 2019, Bridgecrest sent Debtor a Notice of Deficiency letter demanding payment of \$8376.93. See attached letter Exhibit 1.

15. The letter from Bridgecrest violated the permanent discharge injunction.

16. Debtor has been bewildered, distressed, and anxious as she did not understand why such actions were being taken well after her bankruptcy filing.

17. Bridgecrest has willfully violated the automatic stay and the discharge injunction pursuant to 11 U.S.C. Section 362(a)(3), 11 U.S.C. Section 524(a), and 11 U.S.C. Section 727(b), respectively, by refusing to cease collection attempts against the Debtor.

18. Debtor has incurred actual damages because of Bridgecrest's actions.

19. Debtor has incurred attorney's fees because of Bridgecrest's actions.

20. This Court is authorized to award sanctions against the Bridgecrest under 11 U.S.C. Section 362(k)(1) and 105(a) .

WHEREFORE, the Debtor prays for entry of an Order:

a. Requiring Bridgecrest to stay all collection attempts in connection to Debtor's prepetition account balances;

b. Awarding actual damages against Bridgecrest to Debtor plus the amount of attorney fees to be calculated by the Debtor's counsel and submitted with an affidavit once fully and finally determined; and

c. Awarding punitive damages against Bridgecrest payable to the Debtor in the amount of \$500.00 per instance, increasing at a rate of \$500.00 daily until the pre-petition account balance is cleared and all collection attempts are ceased.

Respectfully submitted,

Attorney for Debtor Kellie Patrice Distefano

Date: September 24, 2019

By /s/ Scott Mancinelli
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Bridgecrest
PO Box 29018
Phoenix, AZ 85038

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08-30-2019



KELLIE DISTEFANO
665 SPEAR ST
SAUGATUCK MI 49453-9689

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Account Number: 167000371001

Explanation of Calculation of Surplus or Deficiency

Subject: Sale of 2010 TOYOTA PRIUS HYBRID JTDKN3DU2A1180697

As result of your default, we repossessed and sold the vehicle described above for \$ 4100.00. This statement outlines the manner in which we applied the sale proceeds.

Explanation of Some Terms:

Surplus: The disposition proceeds are greater than the amount owed to us and secured by the vehicle (including applicable costs and expenses, and attorney's fees), resulting in a surplus that we will either return to you or pay to someone else claiming an interest in the vehicle.

Deficiency: The disposition proceeds are less than the amount owed to us and secured by the vehicle (including applicable costs and expenses, and attorney's fees), resulting in a deficiency. You remain liable to us for this deficiency, which you are required to pay in full upon receipt of this communications.

Calculation of Surplus or Deficiency

Aggregate amount of obligations secured by the security interest as of 08-30-2019: \$ 14056.00

Amount of the proceeds of the disposition: \$ 4100.00

Aggregate amount of the obligations after deducting the amount of proceeds = \$ 9956.00

Amount of expenses:

Expenses of retaking: \$ 0.00

Expenses of repairing: \$ 346.00

Other expenses: N/A

Amount of attorney fees and costs (if any): N/A

ADD: Total Expenses = \$ 346.00

Amount of credits and/or rebates:

Unearned finance charges: N/A

Rebates of insurance premiums (VSC, GAP, GPS): \$ 1925.07

LESS: Total Credits and Rebates = \$ 1925.07

The amount of surplus (if applicable):

0.00

Or,

The amount of deficiency (if applicable):

8376.93

Future debits, credits, charges, including additional credit service charges, rebates, and expenses may affect the amount of the surplus or deficiency.

We seek only to collect amounts due and unpaid, as allowed by law. If we become aware that you have been charged any amounts that are not properly due, we will credit those amounts to your account. At this time, we are not aware of any such charges.

Additional information regarding the transaction is available by calling us at, 800-965-8046 or at our place of business listed below.

Sincerely,
Bridgecrest
CC: None

by First Class Mail

IMPORTANT BANKRUPTCY NOTICE: If either you, your spouse or anyone who is liable for this debt has filed bankruptcy, please contact us immediately at the number listed above to provide information regarding the bankruptcy case(s). If either you, your spouse or anyone who is liable for this debt has filed for bankruptcy, we may be stayed from attempting to collect any deficiency from you. If you receive a bankruptcy discharge of your debts in the bankruptcy case, you may no longer be personally liable to us for any deficiency. We may, however, seek to enforce any existing security interests and liens against any collateral. In addition, any surplus resulting from the sale of the repossessed collateral may be paid to the bankruptcy trustee appointed in the bankruptcy case. We will continue to proceed in accordance with all applicable laws and agreements. This Explanation of Calculation of Surplus or Deficiency is for the purpose of complying with Article 9 of the Uniform Commercial Code and all applicable laws and agreements.

**Bridgecrest
PO Box 29018
Phoenix, AZ 85038
Agency Manager 800-965-8046**

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.